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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

LEWIS P. HOPKINS, JR.

vs.

DIANA McGINTY HOPKINS

On Appeal from the Supreme Court of the State of Louisiana

JURISDICTIONAL STATEMENT

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LECOMTE, SHREVEPORT, LOUISIANA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. _____

LEWIS P. HOPKINS, JR.

vs.

DIANA McGINTY HOPKINS

On Appeal from the Supreme Court of the State of Louisiana

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Supreme Court of Louisiana refusing the writ of certiorari petitioned by appellant and affirming the opinion of the District Court is not yet reported. The opinion of the Louisiana Supreme Court is set forth in Appendix A, infra. The response filed by the District Judge to appellant's petition for writ of certiorari in the Supreme Court of Louisiana is set forth in Appendix B., infra. The opinion of the United States

District Court is reported in *Spencer v. Dixon*, 290 Fed. Supplement 531 and is not contained herein as it does not form a part of the instant proceedings.

JURISDICTION

The instant proceeding began as a suit for separation from bed and board filed pursuant to Louisiana Code of Civil Proceedure as more fully appears herein below. Appellant, attorney for the petitioner therein was ordered to show cause why he should not be held in contempt of a judge in the court in which the proceeding was pending. It was alleged by appellant in the contempt proceeding that Louisiana Code of Civil Proceedure, Article 222 was invalid as repugnant to the Constitution of the United States. Both the District Court and Supreme Court decided the question in favor of the validity of the statute. Appellant was adjudged guilty of contempt of Court and sentenced to twenty-four hours imprisonment and a $100.00 fine.

Notice of appeal was filed by appellant in the Supreme Court of Louisiana on July 15, 1969. Jurisdiction to review a judgment of the highest court of a state by appeal is conferred on this Court by 28 U. S. Code, Sections 1257 (2) and 2101 (c). That such jurisdiction exists is the circumstances of this is sustained by the following decisions: *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2nd 686; *Woods v. Georgia*, 370 U.S. 375, 82 S.Ct. 1364 8 L.Ed. 2nd. 569; *Garrison*

v. State of Louisiana, 379 U.S. 64th, 85 S.Ct. 209, 13 L. Ed. 2nd. 125; *Holt v. Commonwealth of Virginia*, 381 U.S. 31, 85 S.Ct. 1375, 14 L.Ed. 2nd. 290.

STATUTE INVOLVED

Article 222 (3) of the Louisiana Code of Civil Proceedure defines the following as contemptous conduct on the part of an attorney:

> "Use of insulting, abusive, or discourteous language by an attorney or other person in open court, or in a pleading, brief, or other document filed with the court in irrelevant criticism of another attorney or of a judge or officer of the court."

It is this provision under which appellant was adjudged guilty of contempt of court.

QUESTIONS PRESENTED

(1) Whether Louisiana Code of Civil Proceedure, Article 222 and particularly Subsection 3 thereof is invalid as in violation of the Fourteenth Amendment to the Constitution of the United States, and through it, the First Amendment to the Constitution of the United States, upon the grounds that it denies the appellant freedom of speech and further that it denies to appellant due process of law.

(2) Whether there was any evidence that appellant had violated the provisions of Article 222 of the Louisiana Code of Civil Proceedure.

STATEMENT

Appellant, DAN A. SPENCER, an attorney at law, practicing in the City of Shreveport, Louisiana represented Lewis P. Hopkins, Jr. in a suit for separation from bed and board against Mr. Hopkins' wife. Mr. Hopkins and his only witness in the said suit were engaged in circulating a petition to have John A. Dixon, Jr., Judge of the First Judicial District Court removed from office pursuant to the provisions of the Louisiana Constitution, Article 7, Sections 2 and 10. The divorce suit was of judicial necessity filed in the First Judicial District Court and was assigned according to the rules of said court to Judge Dixon, one of the five judges. The suit for separation from bed and board was not contested. Mrs. Hopkins appeared in person at the hearing for confirmation of the default in the case. Despite uncontested evidence and proof of the grounds for separation, Judge Dixon dismissed the suit. A motion for rehearing was filed limited to reargument of the case. Immediately thereafter, the appellant, on behalf of Mr. Hopkins, flied a Motion to Recuse Judge Dixon from further consideration of the case.

The Motion to Recuse contained the following paragraph:

> "The plaintiff herein, LEWIS P. HOPKINS, JR. and his chitf witness in this case, MR. CHARLES ANDERSON, III are presently engaged in the process of attempting to have JUDGE JOHN A. DIXON, JR. removed from office as being unfit therefor for virtue of corruption, favoritism, oppression, and misfeasance in office."

Judge Dixon took offense at this Motion and filed the following Rule to Show Cause against appellant:

> "In the above numbered and entitled cause, IT IS ORDERED that a rule issue herein directed to Dan A. Spencer, attorney for plaintiff, directing him to show cause on Friday, March 29, 1968, at 10:00 A.M. in the courtroom of Section "B", First Judicial District Court in and for Caddo Parish, Louisiana, why he should not be held in contempt of court for the following, to wit: That on March 21, 1968, Dan A. Spencer did file a pleading in the above numbered and entitled cause which contained scandalous, insulting, and abusive language in irrelevant criticism of the Judge of said Court, which pleading is attached hereto and made a part hereof, and which language, particularly in paragraph four thereof, impairs the dignity of the Court and the respect for its authority, contrary to the law of the State of Louisiana.
>
> This done and signed on this, the 26th day of March, 1968.
>
> s John A. Dixon, Jr.
> District Judge

A Motion to Recuse Judge Dixon was filed to the Show Cause Order. Neither of the motions to recuse were acted upon by Judge Dixon. Appellant then petitioned the United States District Court to enjoin Judge Dixon from proceeding further with the contempt rule. The United States District Court prohibited Judge Dixon from proceeding further with the contempt rule. This order was later amended to allow further proceedings should another judge be appointed to hear the contempt rule. Appellant's

allegations as to the unconstitutionality of the Louisiana Contempt Statute, Louisiana Code of Civil Proceedure, Article 222 were rejected by the United States District Court sitting as a three judge District Court.

Judge R. B. Williams, Judge of the 26th Judicial District Court was assigned by the Supreme Court of Louisiana, on motion of Judge Dixon, to hear the contempt rule against appellant. Appellant was adjudged guilty of contempt of court on June 10, 1969 and sentenced to twenty-four hours imprisonment and $100.00 fine, the maximum penalty under the Louisiana Code of Civil Proceedure. He was given until June 13 to apply to the Supreme Court of Louisiana for a Wrjt of Certiorari. On June 26, 1969 the Supreme Court of Louisiana refused the petitioned writ.

It is submitted that the provisions of the Louisiana Code of Civil Proceedure under which appellant was adjudged guilty of contempt are unconstitutional as repugant to the First and Fourteenth Amendment of the United States Constitution. It is further submitted that this result must be reached both as to the constitutionality of the statute on its face and as interpreted by the Supreme Court of Louisiana and applied to the appellant.

Appellant did nothing in the Motion to Recuse but allege a fact, ie., the fact that his client and a witness was in the process of attempting to have the District Judge removed from office for the reasons set out in the Louisiana Constitution for removal of a judge from office. The motion filed by appellant on behalf of his client is devoid

of any words offensive in or of themselves. The allegations of the motion were necessary and proper in order to obtain recusal of the district judge from the case. To paraphrase this Honorable Court in the case of *Holt v. Virginia*, supra:

> "The words used in the motion were plain English and in no way offensive in themselves and wholly appropriate to charge bias . . . of a presiding judge . . . and respondent could not, consistent with due process of law, be convicted for contempt for filing these motions unless it might be thought that there was something about the language used that would justify the conviction."

The Louisiana Supreme Court in a previous case involving Judge Dixon and appellant has held the truth is no defense to a charge of contempt of court against an attorney based upon criticism of a judge. In that case *Spence v. Dixon* 181 So. 2nd. 41 248 La. 604 the court stated:

> "In his opposition to the rule of contempt, Spencer admitted that he made the charges set out above. In justification of these charges he pleads as his sole defense the truth of the charges, but justification does not constitute a defense to a contempt of court such as we have here."

The court further held:

> "In support of this contention respondent relits on the Sixth and Fourteenth Amendments to the Constitution of the United States." (Spencer had relied upon Garrisin v. Louisiana, supra, and Holt v. Virginia, supra.)

"NEITHER THESE PROVISIONS OF THE FEDERAL CONSTITUTION NOR THE CITED CASES ARE APPLICABLE IN THE INSTANT CASE." (Emphasis Supplied).

The Court stated further that:

". . . the law gives to a person who has committed a direct contempt, for, as stated previously, under Article 223 of the Code of Civil Proceedure he could have been found guilty without any trial other than an opportunity to be heard orally by way of defense or mitigation."

The foregoing pronouncements of the Louisiana Supreme Court and its authoritative interpretations of the Louisiana Statute are patently inconsistent with the holding of this court in *New York Times v. Sullivan*, Supra; *Garrison v. State of Louisiana*, Supra, and *Wood v. State Georgia*, Supra. Tht appellant insisted throughout the proceeding in the court below that truth was a defense to the charges in question. The district judge in his memorandum filed with the Supreme Court of Louisiana, in response to appellant's petition for a Writ of Certiorari, specifically stated:

"Applicant in his petition, Page 5, Paragraph E, Section 5, assigns as error the trial judge not allowing a defense of truth to the contempt charges. Judge Williams refused to admit any such evidence. The basis of this ruling was the holding by the Supreme Court of Louisiana in the case of Gautreaux vs. Gautreaux, 220 La. 564, 57 So. (2) 188 (1952) which stated:"

"We know of no law or authority which recognizes justification as a defense for contempt of court. To the contrary, it was held in State ex rel. Stewart vs. Reid, 118 La. 827, 43 So. 455, 458, that evidence that the contemptuous language was justified is inadmissable, the court stating that: ''

'Respect for the Judicial office should always be observed and enforced.' ".

The second question presented by this appeal concerns the existence of any evidence of conduct by appellant which would meet constitutional definition of Contempt of Court. Appellant's description of the actions of others in the Motion to Recuse did not constitute allegations by him per se. They constituted rather a necessary factual allegation which was both relevant and material in the motion in which it was contained. Indeed a specific description of the basis of a judge's bias is required by the Louisiana Code of Civil Procedure in a Motion to Recuse. Louisiana Code of Civil Procedure, Article 154. *Schelag v. Dunlap* 130 La. 498, 58 So. 162, *State v. Hayes* 127 La. 762, 53 So. 983.

The action of the Supreme Court of Louisiana and of the District Court overruled the pre-existing law of that State to the effect that an attorney may not be judged guilty of contempt for stating the grounds of recusation in a motion to recuse. *State v. Simbo* 134 La. 73, 97 So. 302; *State v. Nucas*, 147 La. 594, 85 So. 52. It is submitted that appellant's conduct in filing the motion to recuse could not come within a constitutional interpretation of the Louisiana definition of contempt, contained in Louisiana Code of Civil Procedure, Article 222.

THE QUESTIONS ARE SUBSTANTIAL

The issue in this appeal is a fundamental constitutional right balanced against the practical necessity of the orderly administration of justice. It is the appellant's contention that the orderly administration of justice, while no doubt seriously impeded in the instant case, was damaged not by his conduct but by the irresponsibile and vindictive action of a district judge who was facing removal from office. The pronouncements of this court respecting the paramount importance of the constitutional guarantee of free speech are too legion to be quoted herein. The appellant, as an attorney, took a course of action called for by the highest standards of the American Bar, in the face of an admittedly vindictive judge. He was called upon, in the interest of his client, to take action which would certainly bring retributioon. That action, in the form of a motion to recuse, followed clearly defined Louisiana Proceedures for recusation of a judge. The filing of such a motion did not impair the administration of justice. If it had been referred to another judge for hearing, or if Judge Dixon had voluntarily recused himself, as he was clearly required to do, the administration of justice would not in any respect been impaired. Justice would rather have been served. The action of Judge Dixon, however, which was immediately brought to public attention, served only to magnify an already scandulous situation. The United States District Court, in recognition of this fact, enjoined Judge Dixon from hearing the contempt charge against appellant.

As this court noted in *Gitlow v. New York*, 268US 652:

> "For present purposes, we may and do assume that freedom of speech and of the press — which are protected by the First Amendment from abridgment by Congress — are among the fundamental personal rights and 'liberties' protected by the Due Process Clause of the Fourteenth Amendment from impairment by the States.
>
> The Fourteenth Amendment does not permit a state to make criminal a peaceful expression of unpopular view — 'A function of free speech under our system of Government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that lies far above public inconvenience, annoyance or unrest. . . There is no room under our Constitution for a more restrictive view.' "

Judges are not immune from constitutionally protected criticism. As this court stated in *New York times v. Sullivan*, Supra:

> "Authoritative interpretations of the First Amendment guarantees have constantly refused to recognize an exception for any test of truth — whether administered by judges, juries or administrative

officials — AND ESPECIALLY ONE THAT PUTS THE BURDEN OF PROVING TRUTH ON THE SPEAKER." 376 US at 271.

"Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. WHERE JUDICIAL OFFICERS ARE INVOLVED, THIS COURT HAS HELD THAT CONCERN FOR THE DIGNITY AND REPUTATION OF THE COURTS DOES NOT JUSTIFY THE PUNISHMENT AS CRIMINAL CONTEMPT OF CRITICISM OF THE JUDGE OR HIS DECISION."

Bridges v. California, 314 US 252, 86 LEd. 192, 62 S. Ct. 190, 159 ALR 1346.

This Honorable Court's decisions in *Garrison v. State of Louisiana*, Supra also clearly extended the protection of the First Amendment to the appellant. To paraphrase once again the opinion of this Court in *Holt v. Virginia*, Supra:

THE ISSUE OF TRUTH OR FALSITY OF THESE CHARGES WAS NOT HEARD, THE TRIAL COURT CHOOSING INSTEAD TO CONVICT AND SENTENCE PETITIONERS FOR HAVING DONE NOTHING MORE THAN MAKE THE CHARGES. Even if failure to prove their allegations of bias could under any circumstances ever be made part of the basis of the contempt charge against petitioners, these convictions cannot rest on any such unproven assumption.

The Supreme Court of Louisiana has most cavalierly treated that decision of this Court in *Spencer v. Dixon*, Supra and in the instant case.

It is, I believe, plain that this case presents a question of substantial constitutional importance, involving as it does the continued refusal of the Louisiana Courts to recognize and apply the Constitution of the United States as interpreted by this Court in the cited cases. Of equal importance is the necessity to establish the right of members of the Bar to take responsibile and necessary action on behalf of their clients in the face of judicial unpopularity. The precedent established by this case and that of *Spencer v. Dixon*, supra, can only have repressive effect on the Members of the Bar and their pursuit of an honest and impartial administration of justice. This perhaps, more than any other reason, requires consideration of this case by this Honorable Court.

CONCLUSION

For the reasons stated, the questions presented by this appeal are substantial and of public importance and it is respectfully submitted that probable jurisdiction should be noted. Alternatively, in the event that this appeal shall have been rejected, appellant prays that these papers herein be treated as a petition for Writ of Certiorari in accordance with provisions of 28 U. S. Code, Section 2103.

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CERTIFICATE

I, DAN SPENCER, Attorney at Law, hereby certify that a copy of the foregoing Jurisdictional Statement was sent to the Honorable R. B. Williams, Judge, 2nd Circuit Court of Appeals, State of Louisiana, by depositing same in the United States mail, postage prepaid addressed to him at the 2nd Circuit Court of Appeals, Caddo Parish Court House, Shreveport, Louisiana.

.....

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APPENDIX A

SUPREME COURT OF LOUISIANA
New Orleans, 70112

June 26, 1969

LEWIS P. HOPKINS, JR.
v.
DIANA McGINTY HOPKINS
No. 49,925

In re: Dan A. Spencer applying for writ of certiorari

Writ refused.

There is no error of law in the ruling complained of.

s JWS.
s JBF
s JBH
s WBH
s MEB

McCALEB, J., is of the opinion that the application should be granted.

SUMMERS, J., is of the opinion the writ should be granted.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans, June 26, 1969

s Harold A. Moise, Jr.
Deputy Clerk

APPENDIX B

No. 49925

SUPREME COURT

STATE OF LOUISIANA

In re: Application for Writ of Certiorari
by Dan A. Spencer

LEWIS P. HOPKINS, JR.

Versus

DIANA McGINTY HOPKINS

Number 182,404

First Judicial District Court
Caddo Parish, Louisiana

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF LOUISIANA:

An application for Writ of Certiorari in the above matter has been made on the petition of Dan A. Spencer. In accord with the suggestion of the Honorable Justices of the Supreme Court of the State of Louisiana the presiding District Judge Richard B. Williams, files this answer:

The recitals of the application of Dan A. Spencer faithfully relate the chronological order of the events and filings, with only the following material exceptions, to-wit:

A. There is omitted therefrom that Judge Richard B. Williams, following the order appointing him to hear the contempt rule, did by letter addressed to the Clerk of Court, Caddo Parish, Louisiana, and of date April 22, 1968, request the Clerk to properly notify all parties at interest that the rule to show cause directed to Dan A. Spencer why he should not be held in contempt of court, would be heard on Tuesday, May 7th., 1968, at 10:00 A.M., in the First Judicial District Court, Caddo Parish Courthouse, Shreveport, Louisiana. On April 23, 1968, the Clerk notified Mr. Spencer and all other interested parties of the hearing date.

B. On April 24, 1968, the day following the receipt of the above notice, Mr. Spencer filed a motion in the United States District Court, Western District of Louisiana, in Civil Action Number 13,676, entitled Dan A. Spencer Versus John A. Dixon, Jr., and on the basis thereof the Honorable Ben C. Dawkins, Jr., Judge of the said United States District Court, granted a temporary restraining order, dated April 24, 1968, which stated in part:

> "and any and all other persons, whomsoever, by forbidding, preventing or interfering with the exercise of the rights of the defendants herein as set forth in the complaint filed in this cause."

A copy of this restraining order was served on Judge Williams at Natchitoches, Louisiana, on the 25th. day of April, 1968, by a federal marshal, and in obedience to said injunction no hearing was held on May 7, 1968.

C. On September 30th., 1968, the action before the United State District Court was dismissed in an opinion rendered by the Honorable Ben C. Dawkins, Jr. and an appeal therefrom was taken by Mr. Spencer to the United States Court of Appeal for the Fifth Circuit.

D. By order dated March 17, 1969, the Judges of the Fifth Circuit, United States Court of Appeals, dismissed this appeal on Appellant's motion to dismiss same.

E. A copy of the order of dismissal was not received by Judge Williams until May 1969.

F. On May 17, 1969, following receipt of a copy of the said order, Judge Williams wrote the Clerk of Court, Caddo Parish, Louisiana, and requested that the Clerk notify all parties at interest in the contempt proceedings that the rule to show cause would be heard on Tuesday, June 10, 1969, at 10:00 A.M. in an appropriate courtroom of the First Judicial District Court, in and for Caddo Parish, Louisiana.

On June 10, 1968, at 10:00 A.M. court convened in the Caddo Parish Courthouse, Shreveport, Louisiana, at which time Judge Williams presided. There was present Mr. Spencer, who then raised the issue as to the legality of his notice and the fixing of the time of the hearing.

Judge Williams overruled the objection by the defendant in rule, Mr. Spencer, and gave as his reasons that the postponing of the hearing on May 7, 1968, was brought about by the injunction obtained by Mr. Spencer in the United States District Court and his subsequent appeal to the Fifth Circuit, United States Court of Appeals, and which appeal was finally dismissed on Mr. Spencer's own motion.

The oral notice to Mr. Spencer of the time and place of the hearing on June 10, 1968, was legal and sufficient and his appearance at the hearing so attests.

Judge Williams decided the issues raised in Applicant Spencer's petition as follows:

Issue No. 1 — overruled the objections for the reasons above given.

Issue No. 2 — An order of the Louisiana Supreme Court was issued on April 11, 1968, appointing Judge Williams to hear the contempt rule issued against Mr. Spencer. The Judge acting under said order overruled the objections of Mr. Spencer to the Judge's authority to act.

Issue No. 3 — there appears to be an error in the quotation of paragraph 4 of the motion to recuse the District Judge as set forth in applicant's "Argument on Assignment of Errors No. 3." In the last three lines of quoted paragraph 4 as shown on page 8 of the application are the words:

> "removed from office as being unfit therefor for virtue of corruption, bias, prejudice and misfeasance in office".

The actual words as shown on the attached motion are:

> "removed from office as being unfit therefor by virtue of corruption, favoritism, oppression and misfeasance in office."

Judge Williams held that the pleadings prepared and signed by Dan A. Spencer containing the above language and that of paragraph 8 of the original motion were defamatory of the Judge of the District Court and was in contempt of the court. After finding Mr. Spencer in contempt Judge Williams asked him did he wish to make any statement in order to purge himself of contempt. Mr. Spencer stated he had nothing to say. Sentence was then pronounced.

Issues 4 and 5 were overruled as the Court held that Dan A. Spencer, was an Attorney-at-Law and as such was an officer of the Court and had an obligation to properly respect the Judge when so acting.

Applicant in his petition, page 5, paragraph E, section 5, assigns as error the trial court not allowing a defense of truth to the contempt charges. Judge Williams refused to admit any such evidence. The basis of this ruling was the holding by the Supreme Court of Louisiana in the case of Gautreaux vs. Gautreaux, 220 La. 564, 57 So. (2) 188 (1952) which stated:

> "We know of no law or authority which recognizes justification as a defense for contempt of court. To the contrary, it was held in State ex rel. Stewart vs. Reid, 118 La. 827, 43 So. 455, 458, that evidence that the contemptuous language was justified is inadmissible, the Court stating that:
>
> > 'Respect for the Judicial office should always be observed and enforced.' ".

This matter is herewith submitted to the Honorable Justices of the Supreme Court of Louisiana, with leave requested that the above be deemed sufficient reply or answer by the undersigned Judge.

Respectfully Submitted

s RICHARD B. WILLIAMS

RICHARD B. WILLIAMS
Judge-ad-hoc

Copy mailed to:

Mr. Dan A. Spencer
Attorney at La
[illegible]